



**US Army Corps
of Engineers**

Omaha District

PUBLIC NOTICE

Issue Date: May 10, 2002

Expiration Date: None

Helena Regulatory Office

10 West 15th Street, Suite 2200

Helena, Montana 59626

On January 15, 2002, the U.S. Army Corps of Engineers published its Final Notice of Issuance of Nationwide Permits (NWP) in Part II of the Federal Register (FR) (Vol. 67, No. 10). NWPs are general permits issued on a nationwide basis, which authorize specific activities under authority of Section 404 of the Clean Water Act and Section 10 of the Rivers and Harbors Act. The FR notice includes reissuance of all of the existing NWPs, General Conditions and definitions with some modifications, and one new General Condition. The FR notice is available from the Corps Headquarters Website at:

<http://www.usace.army.mil/inet/functions/cw/cecwo/reg/citizen.htm>

After publication of the FR notice, Corps districts finished development of regional conditions for the reissued NWPs. Regional conditions provide additional protection by ensuring that NWPs authorize only those activities with minimal adverse effects on the aquatic environment. Regional conditions also help ensure protection of high value waters within specific geographic areas. By this public notice the Northwestern Division Engineer establishes the enclosed regional conditions applicable to the NWP program in Montana.

Decision documents, including environmental assessments and Findings of No Significant Impact, have been prepared for each NWP indicating that authorized activities comply with the requirements for issuance under general permit authority including compliance with the Section 404(b)(1) Guidelines as published in 40 CFR Part 230 and the requirements of the National Environmental Policy Act. Furthermore, the decision documents have been supplemented by Division Engineers to address decisions concerning regional conditions. These documents are available at the Corps Omaha District Office, 12565 West Center Road, Omaha, Nebraska, 68144-3869.

Publication of the FR notice also began a 60-day process for States, Tribes, and the U.S. Environmental Protection Agency (EPA) to make their Section 401 water quality certification decisions. Water quality certifications or waivers are required under Section 401 of the Clean Water Act for all NWPs that may result in a discharge to waters of the United States to ensure that authorized activities do not violate applicable water quality standards.

On non-Tribal lands, the Montana Dept. of Environmental Quality is the agency responsible for issuing certifications for activities in Montana. The EPA is responsible for issuing certifications on the Blackfeet, Rocky Boy, Fort Belknap, Northern Cheyenne, and Crow Indian Reservations. The Fort Peck Tribes are responsible for issuing certifications on the Fort Peck Indian Reservation, and the Confederated Salish and Kootenai Tribes (CSKT) are responsible for issuing certifications on the Flathead Indian Reservation. Attached is a summary of the Section 401 decisions.

Any questions concerning the NWP program or regional conditions should be directed to Mr. Allan Steinle at the Helena Regulatory Office at the address shown above or at telephone number (406) 441-1375. Any questions concerning the Section 401 water quality certification decisions should be directed to the applicable certifying agency.

401 Certification Decisions on New Nationwide Permits
Effective Date: March 18, 2002

NWP #	MTDEQ	EPA	CSKT	FTPeck
1	W	W	W	C
2	W	W	W	C
3	W	D/C	C	C
4	W	W	C	C
5	W	W	C	C
6	W	W	C	C
7	W	D/CC	D	C
8	W	W	W	C
9	W	W	W	C
10	W	W	W	C
11	W	W	W	C
12	CC	D/CC	D	D
13	D	CC	D	D
14	W	CC	D	D
15	W	W	C	C
16	W	W	D	C
17	W	W	D	C
18	W	W	D	C
19	W	W	C	C
20	W	W	CC	C
21	W	D	C	C
22	W	W	C	C
23	W	W	D	D
24	W	W	W	C
25	W	W	C	C
27	D	D/C	D	C
28	W	W	W	C
29	W	W	D	C
30	W	W	C	C
31	W	W	D	C
32	W	W	C	C
33	W	D	D	D
34	W	W	W	C
35	W	W	C	C
36	W	W	C	C
37	W	D	D	C
38	W	W	CC	C
39	W	D/CC	D	C
40	W	D/C	D	C
41	W	CC	D	C
42	W	D/CC	D	C
43	W	D/C	D	C
44	W	D	D	C

W = Waived

D = Denied

C = Certified without special conditions

CC = Certified with special conditions

D/CC = Some activities denied, some certified with conditions

D/C = Some activities denied, some certified without special conditions

Please check with the certifying agency or the Corps Helena Office for clarification on special conditions.

**NATIONWIDE PERMITS
REGIONAL CONDITIONS
STATE OF MONTANA
OMAHA DISTRICT – CORPS OF ENGINEERS
Effective March 18, 2002**

1. Fens

All nationwide permits, with the exception of 3, 5, 20, and 32, are revoked for use in fens in Montana. For nationwide permits 3, 5, 20, and 32 permittees must notify the Corps in accordance with General Condition No. 13 (Notification) prior to initiating any regulated activity impacting fens in Montana.

Wetlands commonly known as fens are defined as wetlands that are characterized by waterlogged spongy ground and contain (in all or in part) soils classified as histosols or mineral soils with a histic epipedon. To determine whether this provision applies, the entire wetland must be examined for the presence of histosols or histic epipedons.

2. Springs

For all nationwide permits, except NWP 40(a), permittees must notify the Corps in accordance with General Condition No. 13 (Notification) for regulated activities located within 100 feet of the water source in natural spring areas in Montana. For purposes of this condition, a spring source is defined as any location where there is artesian flow emanating from a distinct point at any time during the growing season. Springs do not include seeps and other groundwater discharge areas where there is no distinct point source.

3. Pool and Riffle Complexes

For all nationwide permits, except NWP 40(a), permittees must notify the Corps in accordance with General Condition No. 13 (Notification) prior to initiating any regulated activity involving the discharge of dredge or fill material into pool and riffle complexes. The notification must contain identification of the location of pool and riffle complexes in the project area. Projects involving the discharge of dredged or fill material into a pool and riffle complex will not be authorized by a nationwide permit unless the permittee demonstrates that avoidance is impracticable. Compensatory mitigation for unavoidable adverse impacts may be required.

4. Yellowstone River, Bitterroot River, and Missouri River

In addition to those nationwide permit activities that require notification to the Corps, all activities proposed to be undertaken on the Yellowstone, Bitterroot and Missouri Rivers in accordance with NWPs 3, 12, 13, 14, 16, 18, 19, 39, 40(b), and 42 require prior notification to the Corps in accordance with General Condition No. 13 (Notification).

5. Nationwide Permit 12 - Utility Line Activities

Permittees must notify the Corps in accordance with General Condition No. 13 (Notification) prior to initiating any utility line activity that involves the discharge of dredged or fill material into a flowing stream (including intermittent and ephemeral streams) in Montana.

Utility line projects through wetlands must be designed and constructed to prevent the trench and bedding material from acting as a subsurface drain. Cutoff collars will be installed if necessary to prevent wetland drainage.

6. Nationwide Permit 13 - Bank Stabilization

Bank stabilization structures that project into the stream, such as barbs or vanes, must meet the following criteria for consideration under this nationwide permit:

- The end of the structure at the bank will be no higher than the ordinary high water mark.
- The structure must angle upstream.

- The top of the structure must decrease in elevation from the bank to the end of the structure away from the bank.
- The structure must be keyed into the bed and the bank.

Structures that project from the bank, that are perpendicular to the normal flow direction, or angle downstream, or extend above the ordinary high water mark, or are designed horizontally level, will not be considered under Nationwide Permit 13. Projects that meet the bulleted criteria above may be reviewed under individual permit procedures if the Corps determines the project may have adverse impacts to adjacent properties, river functions, or essential habitat. Structures that occupy more than 10-25% of the bankfull channel width are more likely to be evaluated under individual permit procedures. Any permitted structure that fails must be repaired or all material removed from below ordinary high water.

The following applies to bank revetments (i.e., riprap, rootwads or any bioengineered revetment) and to bank stabilization structures that project into the stream, such as barbs or vanes. All bank stabilization structures must meet the following criteria for consideration under this nationwide permit:

- The top of the bank stabilization structure may not extend above the elevation of the existing top of the bank (i.e., no new levees).
- No bank stabilization structure can block or divert flows from entering a side channel or an overflow channel.

7. Nationwide Permit 23 - Approved Categorical Exclusions

Permittees must notify the Corps in accordance with General Condition No. 13 (Notification) prior to initiating any activities involving the discharge of dredged or fill material into waters of the United States.

8. Nationwide Permit 27 - Stream and Wetland Restoration Activities

Permittees must notify the Corps in accordance with General Condition No. 13 (Notification) prior to initiating any wetland or riparian restoration or creation activities that involve the discharge of dredged or fill material into waters of the United States.

9. Nationwide Permit 39 - Residential, Commercial, and Institutional Developments

Permittees must notify the Corps in accordance with General Condition No. 13 (Notification) prior to initiating any work that involves the discharge of dredged or fill material into waters of the United States.

10. Placement and Removal of Temporary Fills

General Condition No. 24 is amended by adding the following: When temporary fills are placed in wetlands, a horizontal marker (e.g., fabric, certified weed-free straw, etc.) must be used to delineate the existing ground elevation of wetlands that will be temporarily filled during construction to facilitate removal to original grade and contour and to aid in restoration of impacted vegetation.

11. Channel Straightening and Relocation Activities

For all nationwide permits, except NWP 40(a), permittees must notify the Corps in accordance with General Condition No. 13 (Notification) prior to initiating any activity that would result in straightening, relocating and/or shortening an existing perennial stream channel. For all such activities, the following conditions must be met:

- (1) The total channel length reduction is less than 100 feet; and
- (2) The project is necessary to prevent significant damage to private or public structures (roads, buildings, bridges, etc.); or
- (3) The project involves relocation of a previously straightened stream channel and net length is not reduced.

In addition to the above, the following conditions must be adhered to:

(a) Buffer strips will be set aside along the entire length of the new channel with a minimum width of 30 feet measured from the top of each side slope. The buffer strip shall be planted to appropriate permanent, perennial, native vegetation and will remain in this condition. Trees/shrubs removed by the construction will be replaced at a minimum ratio of 2 (replanted): 1 (removed). Higher ratios may be required in higher valued resource areas. The trees/shrubs will be replanted within the buffer strip, extending up and downstream of the project area, if necessary.

(b) The side slopes of the channel will be no steeper than three-foot horizontal to one-foot vertical [3(h): 1(v)]. If steeper slopes are proposed, a registered professional engineer must certify their stability. In no case will unarmored slopes steeper than 2(h): 1(v) be acceptable.

(c) Wetland losses greater than 0.1 acre will be mitigated. Replacement of riffle/pool complexes may be required if it is determined that their loss results in more than minimal impact.